

UNITED STATES OF AMERICA, :
v. : Case No. 3:10-cr-7-KRG-KAP
BERT WILLIAM JOHNSON, : (Case No. 3:13-cv-111-KRG-KAP)
Movant :

Six months after the Court's March 12, 2015 Order adopting my Report and Recommendation and denying Johnson's motion to vacate, Johnson filed a motion under Fed.R.Civ.P. 59(e). It was referred to me under 28 U.S.C. § 636(b)(3). It should be summarily denied.

An untimely motion to alter or amend the judgment under Fed.R.Civ.P. 59 is not a substitute for a timely appeal, nor is it a vehicle for additional arguments that Johnson might wish he had made earlier. Johnson does not show an intervening change in controlling law (the two decisions from the Eastern District of Tennessee that Johnson cites are not controlling, and if any decision from that court should be looked to, Sanders v. United States, 2015 WL 1285330, at *11 (E.D.Tenn. Mar. 19, 2015) is more persuasive as a guide since in Johnson's case, as in Sanders, the Court already went below the advisory guideline range in imposing the 180 month sentence, and that is within the 151-188 range that Johnson argues should apply if Johnson's argument were accepted), the availability of new evidence, or the need to correct a clear error of law or prevent manifest injustice. See Wiest v. Lynch,

710 F.3d 121, 128 (3d Cir.2013) (discussing three purposes of motion under Fed.R.Civ.P. 59(e)).

Pursuant to 28 U.S.C. § 636(b)(1), the parties are given notice that they have fourteen days to file written objections to this Report and Recommendation.

DATE: September 11, 2015

Keith A. Pesto
Keith A. Pesto,
United States Magistrate Judge

Notice to counsel of record by ECF and by U.S. Mail to:

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